IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 22, 2008 Session

J.R. BOLING, ET AL. v. CITY OF PIGEON FORGE, ET AL.

Appeal from the Circuit Court for Sevier County
No. 2004-0085-III Allen W. Wallace, Senior Judge

No. E2007-01652-COA-R10-CV - FILED SEPTEMBER 22, 2008

J.R. Boling ("Plaintiff") sued the City of Pigeon Forge, the Pigeon Forge Police Department, Officer Randy Holbrook, and Detective Tim Trentham. Plaintiff claims that his vehicle was illegally searched by Officer Holbrook and illegally impounded by Detective Trentham. Officer Holbrook and Detective Trentham, both of whom were sued in their individual capacities, filed a motion for summary judgment claiming the undisputed material facts established that they were immune and the claims against them should be dismissed. The Trial Court denied the motion for summary judgment as well as Officer Holbrook's and Detective Trentham's request for an interlocutory appeal pursuant to Tenn. R. App. P. 9. Thereafter, Officer Holbrook and Detective Trentham filed a Tenn. R. App. P. 10 request for an extraordinary appeal, which this Court granted. The sole issue on appeal is whether the Trial Court erred when it denied Officer Holbrook's and Detective Trentham's motion for summary judgment based on qualified immunity. We conclude that the undisputed material facts establish that Officer Holbrook and Detective Trentham are entitled to immunity from the claims asserted by Plaintiff. Accordingly, we reverse the judgment of the Trial Court and enter an order dismissing the claims against Officer Holbrook and Detective Trentham.

Extraordinary Appeal Pursuant to Tenn. R. App. P. 10;
Judgment of the Circuit Court Reversed; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Benjamin Lauderback and Robert H. Watson, Jr., Knoxville, Tennessee, for the Appellants, Tim Trentham and Randy Holbrook.

Rebecca C. McCoy, Sevierville, Tennessee, for the Appellees, J.R. Boling and J.R. Boling Builders, Inc.

OPINION

Background

The underlying facts giving rise to this lawsuit began to unfold on January 13, 2004, when Plaintiff was stopped in Pigeon Forge, Tennessee, by Officer Holbrook of the Pigeon Forge Police Department.[1] Plaintiff claims Officer Holbrook searched his vehicle without his consent or probable cause and, thereafter, Detective Trentham improperly seized and impounded the vehicle. Plaintiff alleged that he made numerous unsuccessful attempts to recover his vehicle and was told various things, including that the vehicle was stolen and/or contained stolen parts. On January 28, 2004, Plaintiff was issued a notice of Property Seizure and Forfeiture of Conveyance. Plaintiff filed suit less than one month after the initial traffic stop because he had been unable to recover possession of his vehicle. Plaintiff brought suit for "violation of constitutional rights, injury to reputation, theft of property, humiliation and embarrassment, outrageous conduct, and the loss of use of the vehicle." Plaintiff sought an unspecified amount of compensatory damages and punitive damages in the amount of $2,000,000.[2]

Defendants responded to the complaint, admitting that a traffic stop had occurred and that Plaintiff's vehicle had been impounded. All allegations of wrongdoing or constitutional violations were denied. Soon after answering the complaint, Defendants filed a motion for summary judgment. According to this motion:

> 1. These Defendants had a duty to seize and impound [Plaintiff's] 2000 Chevrolet Truck pursuant to Tenn. Code Ann. § 55-5-108(b)(1). It is undisputed that the 2000 Chevrolet Truck at issue had at least one vehicle identification number that had been removed and another that had been defaced and altered pursuant to Tenn. Code Ann. § 55-5-107 thereby making the vehicle contraband and subject to [being] seized and impounded by the State of Tennessee Department of Safety. Inasmuch, the Defendant Officers acted in good faith at all times, are therefore immune from civil liability pursuant to Tenn. Code Ann. § 55-5-204(d) and should be dismissed accordingly.
>
> 2. Pursuant to Tenn. Code Ann. § 55-5-108(b)(1) the seizure and impoundment of [Plaintiff's] truck was effected on behalf of the State of Tennessee through its Department of Safety and not the City of Pigeon Forge or its police department. As such the

[1] The pleadings are inconsistent with regard to whether the stop occurred on January 8th or January 13th of 2004. It appears that the correct date is January 13, 2004, and we will use that date in this Opinion.

[2] The vehicle was owned by J.R. Boling Builders, Inc. The company also was a plaintiff. For ease of reference, we will refer only to J.R. Boling as "Plaintiff". Plaintiff also sued Teddy Jones, who sold Plaintiff the vehicle at issue in this case. The claims against Teddy Jones are not at issue in this appeal. Any collective reference to "Defendants" refers only to the City of Pigeon Forge, the Pigeon Forge Police Department, Officer Trentham, and Detective Holbrook.

Plaintiff has failed to state a claim upon which relief can be granted against the City of Pigeon Forge and/or the Pigeon Forge Police Department.

3. The Plaintiff was in violation of Tenn. Code Ann. § 55-4-110(b), and therefore the original stop was justified and constitutional.

4. The individual Defendants are entitled to Qualified Immunity and should be dismissed.

Defendants filed several affidavits in support of their motion for summary judgment. The affidavit of Officer Holbrook[3] provides as follows:

During the time at issue in the Plaintiff's Complaint I was an officer with the Pigeon Forge Police Department.

In early January 2004 at approximately 6:30 a.m. I witnessed a 2000 model Chevy pick up truck with heavily tinted windows (see exhibit A attached to the Motion) traveling without visible license plates.

I pulled over the truck at issue, stepped out of my car and began walking toward the driver's side of the vehicle.

As I approached within a couple of feet of the driver's side window I noticed through the very heavily tinted windows that there was a temporary license plate mounted behind the driver's side head rest in the back window.

Our department had seen a recent rash of stolen Chevy trucks, and I was on notice to look for defaced, altered or missing VIN's from required locations, such as driver's side doors, on Chevy trucks.

As I spoke to the driver of the vehicle, J.R. Boling, he was unable to provide me with any bill of sale or receipt for the purchase of the truck. I asked him to simply open the driver's door so I could see the required permanent factory inspection sticker that should have been attached to the driver's door showing the VIN. The required sticker was not on the door in direct violation of Tenn. Code Ann. § 55-5-108 (see Exhibit B to the Motion).

[3] We have omitted original paragraph numbering from all affidavits quoted in this opinion.

I was aware that pursuant to Tenn. Code Ann. § 55-5-108(b)(1)[4] I had a statutory duty to seize and impound on behalf of the State of Tennessee Department of Safety any vehicle that had a VIN that was removed, defaced, or altered.

Upon seeing that the VIN on the door had been removed, and, acting pursuant to my required statutory duty, I told Mr. Boling I was going to impound his truck. I allowed Mr. Boling to drive his truck to the Pigeon Forge impound lot which he did. I did this knowing it was my duty as an officer to seize and impound any vehicle with a removed, altered, and/or defaced VIN on behalf of the State of Tennessee Department of Safety.

At the City Police Department impound lot I allowed Mr. Boling to retrieve personal items from the truck.

I contacted Detective Tim Trentham and advised there was a vehicle in the City impound lot I wanted him to look at regarding a removed VIN from a required location. Following an investigation by Pigeon Forge Detective Tim Trentham and Special Agent David Brown with the State of Tennessee Criminal Investigations Division it was confirmed there was not only a removed VIN from the driver's door, but there were also non-permanent rivets in the dash board VIN plate indicating it had been defaced and/or altered in violation of Tenn. Code Ann. § 55-5-108 and there were stolen parts on front assembly of the truck thereby making it evidence of a crime.

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[4] Tenn. Code Ann. § 55-5-108(b)(1) (Supp. 2007) provides as follows:

> (b) As used in this subsection (b), unless the context otherwise requires, "property" means any vehicle, aircraft, boat or other vessel, special mobile equipment, boat trailer, mobile self-propelled construction, farm or forestry machinery, similar equipment, or any component part.
>
> (1) Any property on which the manufacturer's serial number, engine number, transmission number, vehicle identification number, or other distinguishing number or identification mark has been removed, defaced, covered, altered, destroyed or otherwise rendered unidentifiable is declared to be contraband and subject to forfeiture to the state. This subdivision (b)(1) applies to all persons, including, but not limited to, those persons designated in subsection (a). It is the duty of the commissioner of safety or the commissioner's designee, and of any other state, county, or municipal law enforcement officer or campus police officer as defined in § 49-7-118, when the person has reason to believe that property constitutes contraband under this section, to seize and impound or otherwise take custody of the property on behalf of the Department of Safety.

> I issued a Notice of Property Seizure and sent it certified mail along with the letter from myself to J.R. Boling on January 28, 2004. (See Cumulative Exhibit C to the Motion for Summary Judgment).
>
> Mr. Boling received and signed the certified mail receipt and Notice of Seizure on February 2, 2004. (See Cumulative Exhibit C to the Motion for Summary Judgment).
>
> As the temporary tags were not visible, in clear violation of Tenn. Code Ann. § 55-4-110(b), I had probable cause to pull over the truck at issue. Based on the recent rash of stolen Chevy trucks, and the fact that Mr. Boling could not produce a bill of sale or receipt for the purchase of his truck I had probable cause to ask to look at his door.

Defendants also filed the affidavit of Detective Trentham which confirmed much of the information contained in Officer Holbrook's affidavit. According to Detective Trentham:

> On the date that Mr. Boling's vehicle was seized and impounded I had an opportunity to look at Mr. Boling's truck at the Pigeon Forge impound lot. I confirmed that the required federal inspection sticker and permanently assigned VIN had been removed and was missing from the driver's side door in direct violation of Tenn. Code Ann. § 55-5-108. I further determined there was a VIN plate that had been likely removed and certainly had been altered and/or defaced on the front dash board in violation of Tenn. Code Ann. § 55-5-108, § 55-5-111 and § 55-5-107. There were non-permanent, non-factory rivets holding the VIN plate in place on the front dash board.
>
> Attached as Exhibit 1 to my Affidavit is a photograph of the front dash VIN plate of the truck at issue taken on the date of the seizure showing that the rivets were not the required "roset" factory rivets, but were standard rivets. Also attached as Exhibit 2 to my affidavit is a printout from the NICB showing that since 1965 the "roset" rivets were used on General Motors trucks except [on] … very rare occasions.
>
> I met Special Agent David Brown of the State of Tennessee Criminal Investigations Division and we conducted a more thorough inspection of the truck. We determined there were stolen parts on the Plaintiff's truck that matched a vehicle reported by the National Insurance Crime Bureau as being stolen from Boone County, Kentucky on February 11, 2002.

> The Plaintiff's truck clearly had VIN's that had been removed and had been defaced and/or altered easily seen even with a casual inspection. From the time the vehicle was first seized and impounded it was done so on behalf of the Tennessee Department of Safety and not on behalf of the City of Pigeon Forge or the Pigeon Forge Police Department.

Defendants also filed the affidavit of David Brown, a Special Agent with the Tennessee Department of Safety, Criminal Investigations Division. According to Special Agent Brown:

> Detective Tim Trentham of the Pigeon Forge Police Department contacted me with information that Plaintiff's truck had been seized pursuant to T.C.A. § 55-5-108 after Officer Randy Holbrook of the Pigeon Forge Police Department noticed that the VIN tag that should have been on the truck's door had been removed.
>
> I inspected Plaintiff's truck two days after the Pigeon Forge Police Department seized it. I determined that the Plaintiff's truck was in violation of T.C.A. § 55-5-108 as not only was the door VIN tag removed, but also the VIN plate in the truck's dashboard had been removed and re-attached to the dashboard with non-factory rivets. I also determined that there were stolen parts on Plaintiff's truck which is still under investigation.
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> Per T.C.A. § 55-5-108, if local law enforcement has reason to believe that property constitutes contraband, it is the duty of local law enforcement to seize and impound or otherwise take custody of the property on behalf of the Department of Safety.

The final affidavit submitted by Defendants was the affidavit of Jimmy Hester, a Special Agent in charge of the Tennessee Highway Patrol, Criminal Investigations Division Region 3. According to Special Agent Hester:

> As part of my duty as Special Agent in charge of the Tennessee Highway Patrol, Criminal Investigations Division Region 3, I taught statewide classes for various police agencies, including, but not limited to, the City of Pigeon Forge Police Department. I have taught classes for the City of Pigeon Forge Police Department on several occasions, and did so prior to January [13], 2004.
>
> As part of the courses I taught, I instructed law enforcement personnel, including personnel from the City of Pigeon Forge Police Department, that there is no legitimate reason for anyone to ever remove a manufacturer's identifying number or mark, including a

federal manufacturer/inspection sticker on the driver's door frame, as that is a violation of Tenn. Code Ann. § 55-5-108. Further, as part of my instruction, I taught law enforcement personnel, including the Pigeon Forge Police Department, that if a door sticker is removed the officer has the obligation to investigate further in order to obtain the true identity of the vehicle and/or component part. I further taught in my classes and courses that if the public vehicle identification number or federal certification label is removed from certain brands or models of vehicles, including Chevy trucks of the type at issue in this lawsuit, then that renders the sheet metal (body and component parts) unidentifiable and the officer must seek the identification by other means, that being a full inspection of the vehicle.

In my opinion, and based upon my experience, training, and skill, the fact that the driver's door of the Plaintiff's truck at issue did not have the federal manufacturer/inspection VIN sticker on it provided probable cause for the seizure of the vehicle at issue, if, for no other reason, than to conduct a more prudent and detailed search of the vehicle at issue to determine the true identification of the truck at issue.

Based upon my experience, training, and skill, it is my opinion that the Plaintiff's truck at issue was in violation of Tenn. Code Ann. § 55-8-108 as not only was the door manufacturer/inspection VIN sticker removed, but also the VIN plate in the truck's dashboard had been removed and re-attached to the dashboard with non-factory rivets.

Based on current federal statutes, the Defendants had probable cause and good faith cause to seize the truck at issue on behalf of the State of Tennessee.

It is my opinion based upon my experience, training, and skill, that due to the violations of Tenn. Code Ann. § 55-5-108 probable cause existed for the initial seizure of the Plaintiff's truck, and probable cause existed for the continued possession by the State of Tennessee for purposes of inspection of the vehicle.

The purpose of the Vehicle Identification Numbers, Federal Certification Label, and other Manufacturer's identifying numbers and/or marks are to identify a particular vehicle, excluding all others. Therefore, there is no legitimate reason or purpose for ever removing or altering one of these identifiers.

> That once any Manufacturer's Identifying Number has been removed from a vehicle or component part thereof, the true identity of that vehicle or component part is in question and can only be established through a thorough examination by someone who has been trained in vehicle identification.

Plaintiff's affidavit was filed in response to the motion for summary judgment. That affidavit provides in its entirety as follows:

> I am over eighteen (18) years of age.
>
> My legal name is J.R. Boling, Jr.
>
> My physical address is 4729 Henry Town Road, Sevierville, TN 37862.
>
> I filed my 2003 income tax return with the address of New Era Road due to the fact that this was the address of another business I was operating at the time with a partner. However, that business has since been dissolved.
>
> Defendant Holbrook never asked me for my registration, a bill of sale, or proof of insurance during the stop giving rise to this litigation on January [13], 2004.
>
> I personally telephoned the Pigeon Forge Police Department on numerous occasions to provide the information to the Department, Defendant Holbrook, Defendant Trentham, and [Special Agent] Brown.
>
> Further, the Affiant saith not.

On July 11, 2007, the Trial Court entered an order denying Defendants' motion for summary judgment. This order states as follows:

> This cause came on to be heard on the 15th day of February, 2007 and the 16th day of May, 2007, before the Honorable Allen W. Wallace upon Defendants City of Pigeon Forge, Pigeon Forge Police Department, Randy Holbrook, and Tim Trenthams' Motion for Summary Judgment. The Court having heard argument of counsel, finds that the Motion for Summary Judgment is not appropriate in the instant case, qualified immunity is denied, and the entire Motion is, therefore DENIED.

> It is ORDERED, ADJUDGED and DECREED that the Defendant's (sic) request for permission to file [a Tenn. R. App. P. 9] interlocutory appeal on qualified immunity is hereby DENIED.
>
> ENTER this 11th day of July, 2007.

After the request for permission to file an interlocutory appeal pursuant to Tenn. R. App. P. 9 was denied by the Trial Court, Officer Holbrook and Detective Trentham filed a request for a Tenn. R. App. P. 10 extraordinary appeal with this Court. We granted the Rule 10 request with the sole issue being whether the Trial Court erred when it determined that there was a material factual dispute as to whether Officer Holbrook and Detective Trentham were entitled to qualified immunity, thereby resulting in a denial of their motion for summary judgment.[5] We also stayed all proceedings in the Trial Court pending resolution of this appeal.

Discussion

In *Teter v. Republic Parking System, Inc.*, 181 S.W.3d 330 (Tenn. 2005), our Supreme Court recently reiterated the standards applicable when appellate courts are reviewing a motion for summary judgment. The Court stated:

> The purpose of summary judgment is to resolve controlling issues of law rather than to find facts or resolve disputed issues of fact. *Bellamy v. Fed. Express Corp.*, 749 S.W.2d 31, 33 (Tenn. 1988). Summary judgment is appropriate only when the moving party demonstrates that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. *See* Tenn. R. Civ. P. 56.04; *Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). In reviewing the record, the appellate court must view all the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in favor of the non-moving party. *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000). And because this inquiry involves a question of law only, the standard of review is de novo with no presumption of correctness attached to the trial court's conclusions. *See Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995).

Teter, 181 S.W.3d at 337.

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[5] Defendants raise a second issue on appeal, that issue being whether Officer Holbrook and Detective Trentham were entitled to a Tenn. R. App. P. 3 appeal as of right from the denial of their motion for summary judgment. We decline to decide this issue for two reasons. First, it exceeds the scope of the order we entered granting the Rule 10 appeal. Second, because we granted the request for a Rule 10 extraordinary appeal, this second issue is moot.

It is undisputed that Plaintiff was stopped initially because his temporary license tag was not visible due to dark tinting on the back window. The statute addressing visibility of license plates is Tenn. Code Ann. § 55-4-110(b) (2004), which provides as follows:

> Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so to prevent the plate from swinging and at a height of not less than twelve inches (12") from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible. No tinted materials may be placed over a license plate even if the information upon such license plate is not concealed.

Plaintiff does not deny that when he was pulled over, his tag was not visible because it was behind a dark tinted window. Plaintiff offered neither the Trial Court nor this Court anything to create a genuine issue of material fact as to whether the initial stop by Officer Holbrook was legally sound. Indeed, Plaintiff essentially admits that there was probable cause for the stop. Plaintiff states in his brief:

> Holbrook's only reason for stopping Boling was the lack of a visible license plate, and the temporary tag on Boling's truck was valid. At this time, Holbrook's reason for stopping Boling had dissipated.… After resolving the license-plate issue, Holbrook and Boling conversed for a few minutes. Then, without reason, warrant, or consent, Holbrook began searching Boling's truck for the vehicle identification number ("VIN") sticker. This illegal search revealed the absence of a VIN sticker on the inside of the truck's driver's-side door. Holbrook then seized Boling's truck and turned it over to Trentham.

It is clear from the above that Plaintiff does not claim that the initial stop was unlawful, and we conclude that it was legally proper. *See Weaver v. Shadoan*, 340 F.3d 398, 407-08 (6th Cir. 2003) ("In the instant case, it is clear that Shadoan had reasonable suspicion to stop Weaver. The record clearly indicates that Shadoan believed that Weaver's registration was either invalid or improperly displayed behind darkly tinted windows, violations of Tennessee's vehicle registration and window tinting laws. T.C.A. §§ 55-4-110, 55-9-107(a). Shadoan, therefore, was justified in conducting an ordinary traffic stop of Weaver's automobile."). Plaintiff, however is simply wrong when he states that since his tag was valid, "Holbrook's reason for stopping Boling had dissipated…." The fact that Plaintiff's tag was valid in no way cured his violation of Tenn. Code Ann. § 55-4-110(b). There is no dispute but that Plaintiff was in violation of this statute both before and during the stop.

What Plaintiff is challenging is the allegedly illegal search which took place after the initial stop and the resulting seizure of his vehicle. Plaintiff claims this search was "without reason, warrant, or consent …." Holbrook states in his affidavit that he asked Plaintiff to "simply open the

driver's door so I could see the required permanent factory inspection sticker that should have been attached to the driver's door showing the VIN." This request was consistent with applicable law. *See Weaver*, 340 F.3d at 409 ("We have held that '[a] law enforcement officer does not violate the Fourth Amendment merely by approaching an individual, even when there is no reasonable suspicion that a crime has been committed, and … request[s] for consent to search the individual's vehicle.' *Erwin*, 155 F.3d at 823."). The facts further establish that Plaintiff did in fact open his door. In our opinion, Holbrook's affidavit is sufficient to establish consent on the part of Plaintiff for the very limited visual inspection for the appropriate VIN number. Although Holbrook's affidavit does not expressly state whether Plaintiff granted or withheld consent, the only reasonable inference is that such consent was given because Plaintiff opened the driver's door.

Because Holbrook did establish consent on the part of Plaintiff, the question thus becomes whether Plaintiff created a genuine issue of material fact regarding his alleged lack of consent. In his brief, Plaintiff cites this Court to no affidavit or other post-complaint sworn testimony by Plaintiff stating specifically that he did not willingly consent to the visual search. Plaintiff's affidavit quoted above altogether fails to touch on the issue of his consent or alleged lack thereof. In his brief Plaintiff claims the search was not consensual, but Plaintiff cites us only to his verified complaint. His verified complaint does nothing more than state his legal conclusion to the effect that his vehicle was searched without consent. Plaintiff does not provide any factual basis supporting this legal conclusion. This is insufficient to create a genuine issue of material fact for summary judgment purposes. *See Blair v. West Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004)("If the moving party successfully negates a claimed basis for the action, the non-moving party *may not simply rest upon the pleadings, but must offer proof to establish the existence of the essential elements of the claim*." (quoting *Staples v. CBL & Assoc., Inc.*, 15 S.W.3d 83, 88-89 (Tenn.2000)) (emphasis added).[6]

Relevant to this appeal is Tenn. Code Ann. § 55-5-204(d) (2004) which provides as follows:

> No civil liability shall be attached to any law enforcement officer acting in good faith in regard to the seizure and forfeiture of motor vehicles, motor vehicle component parts, or tools, implements, or instrumentalities pursuant to this section.

In *Weaver v. Shadoan*, 340 F.3d 398 (6th Cir. 2003), the United States Court of Appeals for the Sixth Circuit explained the doctrine of qualified immunity as follows:

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[6] We are assuming, without deciding, that there was a search of Plaintiff's vehicle after Officer Holbrook requested to see the end of the driver's door of Plaintiff's vehicle. At the administrative hearing where Plaintiff successfully regained possession of his vehicle, the administrative law judge found that "[a]s [Plaintiff] exited his vehicle, the officer noticed that the driver's side door did not have a VIN sticker on it and the vehicle was therefore impounded." This finding would support a conclusion either that there was no search inasmuch as the lack of the required VIN sticker was in plain sight as Plaintiff exited his vehicle, or that Plaintiff voluntarily allowed Officer Holbrook to see if the required VIN sticker was on the driver's door.

> The doctrine of qualified immunity shields public officials acting within the scope of their official duties from civil liability. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Qualified immunity is "an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." *Mitchell*, 472 U.S. at 526, 105 S.Ct. 2806 (emphasis in original). The Supreme Court has emphasized that questions of qualified immunity should be resolved "at the earliest possible stage in the litigation." *Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001) (quoting *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991)(per curiam)). The Supreme Court has recently set forth a two-prong test that must be applied to a qualified immunity analysis. *Id.*
>
> The first prong is a threshold question, namely: "Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Id*. If the answer is in the negative, then the inquiry ends. If a violation could be established, the second prong requires an examination of whether "the right was clearly established" at the time of the events at issue. *Id*. In order for a right to be clearly established, … "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id*. at 202, 121 S.Ct. 2151. The inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Id*. at 201, 121 S.Ct. 2151. As the Court explained, "[t]he relevant dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id*. at 202, 121 S.Ct. 2151.

Weaver 340 F.3d at 406-07. Plaintiff concedes in his brief that governmental officials such as Officer Holbrook and Detective Trentham are shielded by qualified immunity from civil liability or damages when performing their discretionary functions if their conduct does not violate a clearly established constitutional or statutory right of which a reasonable person would have known.

The undisputed material facts establish that there was a recent rash of stolen vehicles prior to the stop in the present case, and Plaintiff was driving a vehicle that was of the type being stolen. Officer Holbrook clearly had probable cause to stop Plaintiff because there was no visible tag on the vehicle as the visibility was significantly reduced by the vehicle's tinted windows. Acting within his authority, Officer Holbrook asked Plaintiff to open the driver side door so he could see the VIN number located on the driver's door, and Plaintiff opened the door. Because there was no VIN number on the door, Officer Holbrook proceeded to have Plaintiff's car impounded. A further inspection of the vehicle resulted in the discovery of other legal deficiencies with the dashboard VIN

number. Officer Holbrook and Detective Trentham both had the duty under Tenn. Code Ann. § 55-5-108(b)(1) to seize and impound Plaintiff's vehicle on behalf of the Department of Safety if the vehicle identification number had "been removed, defaced, covered, altered, destroyed or otherwise rendered unidentifiable…" as under the statute that vehicle was "declared to be contraband and subject to forfeiture to the state." It is undisputed in the record before us that Plaintiff's vehicle identification number had been "removed, defaced, covered, altered, destroyed or otherwise rendered unidentifiable…."

Our General Assembly has decided by the enactment of Tenn. Code Ann. § 55-5-204(b) that "[n]o civil liability shall be attached to any law enforcement officer acting in good faith in regard to the seizure or forfeiture of motor vehicles … pursuant to this section." We conclude that the undisputed material facts demonstrate that both Officer Holbrook and Detective Trentham were acting in good faith pursuant to the Tennessee statutes at all relevant times, and Plaintiff has failed to create a genuine issue of material fact as to whether Officer Holbrook or Detective Trentham violated a clearly established statutory or constitutional right. Accordingly, we reverse the judgment of the Trial Court denying the motion for summary judgment filed by Officer Holbrook and Detective Trentham, and we dismiss the lawsuit against these two individuals.

Conclusion

The judgment of the Trial Court denying Officer Holbrook's and Detective Trentham's motion for summary judgment is reversed and this Court grants summary judgment to Officer Holbrook and Detective Trentham in their individual capacities. This cause is remanded to the Trial Court for further proceedings consistent with this Opinion and for collection of the costs below. Costs on appeal are taxed to the Appellees, J.R. Boling and J.R. Boling Builder's, Inc.

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D. MICHAEL SWINEY, JUDGE